

# **EXHIBIT 6**

**Filed Under Seal**

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Case No. 0:18-cv-01776-JRT-HB

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IN RE PORK ANTITRUST LITIGATION

This Document Relates to: All Actions  
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HIGHLY CONFIDENTIAL

REMOTE TESTIMONY OF SCOTT MCCANN -  
OLEAN WHOLESALE GROCERY COOPERATIVE, INC.

30(B)(6)

AUGUST 10, 2022 - 10:00 A.M. EDT

JOB NO. 2022-855882

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2 important factors of what we just talked  
3 about?

4 A Low -- best price and quality.

5 Q And so earlier when we were  
6 talking about the harm that Olean has  
7 suffered, it relates to paying more for  
8 pork than it believes it should have; is  
9 that right?

10 A That's fair.

11 Q And what is your factual basis  
12 for stating that Olean was harmed and paid  
13 more than it should have?

14 A Factual?

15 Q Yes.

16 A I have no -- I cannot give you  
17 pork butts were a \$1.19 a pound and they  
18 should have been .99. I don't have any  
19 factual numbers to share.

20 Q Aside from numbers, are there any  
21 other facts you can point to to support  
22 that Olean should have been paying  
23 different prices?

24 MR. BOURNE: Objection.

25 THE WITNESS: Say again.

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2 BY MS. ZIMMERMAN:

3 Q You know, aside from that number  
4 example you gave, is there any other facts  
5 you can point to to support that Olean was  
6 harmed in this matter?

7 A Yes. Our lead counsel helps us  
8 and directs us on those issues.

9 Q So your factual basis for  
10 understanding Olean's harm in this case --  
11 do you have any independent basis for  
12 understanding Olean's harm in this case,  
13 aside from what you learned from counsel?

14 A No.

15 Q How do you know that -- how does  
16 Olean know that it's been harmed in this  
17 case?

18 MR. BOURNE: Objection. Form.

19 Asked and answered.

20 THE WITNESS: Through our  
21 counsel.

22 BY MS. ZIMMERMAN:

23 Q Does Olean have any independent  
24 basis outside of information from counsel  
25 that it's been harmed in this case?

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2 A Excuse me. No.

3 Q What companies are responsible  
4 for the harm that Olean suffered?

5 A All the pork companies listed.

6 Q Listed in the -- in what?

7 A In just about every bit of  
8 paperwork I have seen so far.

9 Q So the defendants in this case,  
10 is that who you're referencing?

11 A I'm sorry, all the defendants.

12 Q When did Olean begin being harmed  
13 by the conspiracy in this case?

14 A Most likely since '09.

15 Q Have you personally investigated  
16 whether Olean was harmed in this case?

17 A I have not.

18 Q We talked about factual basis.  
19 But a little bit different, you know, what  
20 is your evidence that Olean has been  
21 harmed?

22 MR. BOURNE: Object to form.

23 THE WITNESS: I'm sorry, again.

24 BY MS. ZIMMERMAN:

25 Q What is Olean's evidence that

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2 it's been harmed in this case?

3 MR. BOURNE: Object to form.

4 Asked and answered.

5 THE WITNESS: I'm sorry. Joe,  
6 did you --

7 MR. BOURNE: I just made an  
8 objection. But you can answer the  
9 question.

10 THE WITNESS: Again, Sarah, I'm  
11 sorry. How do I know I have been  
12 harmed?

13 BY MS. ZIMMERMAN:

14 Q What is your evidence?

15 A Oh, what is the evidence.

16 Q Correct.

17 A My evidence is through my  
18 counsel.

19 Q Are there -- would you expect

20 that records showing Olean's pork

21 purchases in this case would be used to

22 support the harm that it suffered?

23 A Yes.

24 Q Would that include things like

25 the transactional data reflecting Olean's

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2 pork purchases in this case?

3 A I would believe so, Sarah.

4 Q And I believe you mentioned

5 earlier that Olean does not have that data

6 any longer; is that correct?

7 A Electronic data, no.

8 Q Was that data stored in any

9 particular database?

10 A It was.

11 Q What was that database called?

12 A You know, Sarah, I guess call me

13 simple, it was a room with a data server

14 in there and it was all in there.

15 Q Can you describe -- let me ask it

16 this way.

17 Are you familiar with the term

18 "Retalix"?

19 A Yes.

20 Q And what does Retalix mean to

21 you?

22 A It's a software company, I

23 believe.

24 Q And was that software used to

25 maintain this type of data?

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2 A Correct.

3 Q And so that Retalix database

4 would have maintained Olean's historical

5 pork purchases for the time period of --

6 for a particular time period?

7 A Correct.

8 Q Do you know what time period that

9 database was used by Olean?

10 A Wow, let's -- to the best of my

11 knowledge, '13, '14, '15, up until we sold

12 the assets.

13 Q Was that an asset that was sold?

14 A Yes.

15 Q Are you still able to access the

16 Retalix database?

17 A No. As far as I know, it's in

18 the dumpster.

19 Q Do you know when it was thrown

20 away?

21 A I do not. Again, as far as I

22 know, that might not even be the case. I

23 have no idea.

24 Q Were you able to access that

25 database while you were employed at C&S?



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2 A No.

3 Q Do you know if anyone at C&S was

4 able to access it?

5 A I don't -- I do not know that.

6 Q Are you familiar with a Great

7 Plains database?

8 A Yes.

9 Q And what is that?

10 A I believe that was our warehouse

11 system and I think it had some accounting

12 tied to that.

13 Q To your knowledge, would that

14 database also have reflected Olean's pork

15 purchases for a particular time period?

16 A Yes.

17 Q Do you recall what time period

18 that system was used?

19 A I do not. That wasn't my

20 umbrella.

21 Q Was it used, to the best of your

22 recollection, before the Retalix database?

23 A I believe so.

24 Q Are you still able to access that

25 Great Plains database?

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2 A No, ma'am.

3 Q So is it fair to say that Olean

4 does not have access to the transactional

5 data reflecting its pork purchases between

6 2009 and 2018?

7 MR. BOURNE: Object to form.

8 THE WITNESS: That's just -- no,

9 we don't have access.

10 BY MS. ZIMMERMAN:

11 Q And is it also fair to say that

12 Olean cannot access that transactional

13 data reflecting its pork purchases between

14 2009 and 2018?

15 A No, we cannot access that.

16 Q Aside from these -- this  
17 transactional data we have been discussing  
18 reflecting these historical pork  
19 purchases, are there other documents you  
20 expect Olean would rely on to support the  
21 harm it suffered in this case?

22 MR. BOURNE: Object to form.

23 THE WITNESS: I think just the  
24 material we have already produced.

25 BY MS. ZIMMERMAN:

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2 Q Are you referencing anything in  
3 particular within what you have produced?

4 A Yes. I think we produced 50 --  
5 50-plus boxes of invoices, hard -- you  
6 know, the papers -- the paper trail, if  
7 you will.

8 Q And would those invoices  
9 reflect -- what do those invoices  
10 reflect?

11 A I think those are invoices of all  
12 the pork purchases.

13 Q For --  
14 (Simultaneous Crosstalk.)

15 A A certain period.

16 Q -- what time period?

17 A I don't have the exact time  
18 period of that.

19 Q Do you know if those invoices  
20 date back to 2009?

21 MR. BOURNE: Object to scope.

22 THE WITNESS: I believe so.

23 BY MS. ZIMMERMAN:

24 Q And they would contain every pork  
25 purchase -- they would reflect every pork

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2 Q And the e-mail down below says,  
3 "Hormel cooked ham." I think that is a 1  
4 or an I -- "need five pallets for next  
5 Tuesday. Need cost for po number."

6 A Yes.

7 Q Can you tell me who Joe Mancuso  
8 is?

9 A I do not know a John Mancuso.  
10 Again, as vice president of  
11 procurement and member development, I  
12 didn't get involved in day-to-day  
13 operations of the buyers. I didn't -- I  
14 was oversaw the buyers, but they worked  
15 independently, if you will.

16 Q Would it appear to you that Mark  
17 is trying to order pork from Mr. Mancuso?

18 A Yes.

19 Q So -- and Mancuso, it appears,  
20 works with a company called Mancuso  
21 Marketing; is that fair?

22 A Yes.

23 Q So Mancuso would be a supplier of  
24 pork for Olean; is that correct?

25 A Yes.

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2 Q And you are not familiar with  
3 Mancuso?

4 A No.

5 Q Are you prepared to testify about  
6 Olean's purchases of pork from Mancuso?

7 A I am not. I don't know Mancuso  
8 other than he's a supplier for us.

9 Q Let's go ahead -- so, you --  
10 sorry, go ahead.

11 MS. ZIMMERMAN: Let's go ahead  
12 and scroll up to page 23773 which is  
13 page 4 of the PDF.

14 Right there.

15 BY MS. ZIMMERMAN:

16 Q So as you can see this is an  
17 e-mail kind of later in the chain we were  
18 just looking at, again, from Mark Hale --  
19 who is with Olean, correct?

20 A Yes.

21 Q He was a pork buyer for Olean?

22 A Mark Hale?

23 Q Yes.

24 A Yes.

25 Q And he's sending an e-mail to

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2 Jeff Gangloff; is that right?

3 A Yes.

4 Q Are you familiar with Mr.  
5 Gangloff?

6 A I am not.

7 Again, they work pretty much  
8 independently, unless there was a problem.  
9 They did report to me. I did not rule or  
10 supervise over the shoulder, let's say.  
11 They worked all independently and we  
12 collaborated once a week on different  
13 things. But, no.

14 Q Mr. McCann, you are here to  
15 testify on behalf of Olean as a corporate  
16 representative; is that correct?

17 A Yes.

18 Q And one of the topics that we  
19 reviewed earlier, you looked through the  
20 topics in Exhibit 1.

21 Do you recall that?

22 A Yes. From Tab 1?

23 Q Yes, Tab 1 or Exhibit 1 --  
24 (Simultaneous Crosstalk.)

25 A -- 1.

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2 number is?

3 A Well, it looks like a growth  
4 number in this circumstance would be  
5 maybe -- I can't speak clearly to that --  
6 but maybe like a rebate program.

7 Q And what do you mean by "a rebate  
8 program"?

9 A Well, rebate program could be  
10 many things. You purchase dollars  
11 amount -- dollar amounts, poundage,  
12 particular brands, cases, you could get a  
13 rebate through the manufacturer.

14 Q And so it sounds like in response  
15 to Mark telling Jeff that someone else, a  
16 competitor, is offering a lower price,  
17 Jeff points out the rebate dollars that  
18 are at stake here through their program;  
19 is that fair?

20 A Yes.

21 Q Are growth programs and rebates  
22 usually negotiated terms?

23 A No.

24 Q A manufacturer will simply offer  
25 their growth program and you accept it

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2 wholesale?

3 A Sure. Yes.

4 MS. ZIMMERMAN: Bryan, you can  
5 take this one down.

6 BY MS. ZIMMERMAN:

7 Q Does Olean purchase pork pursuant  
8 to contracts?

9 A I'm sorry, Sarah, did you just  
10 say price contract?

11 Q Any contract.

12 Does Olean purchase pork pursuant  
13 to contracts?

14 A Yes.

15 Q And when does Olean purchase pork  
16 pursuant to a contract?

17 A I do not know that answer.

18 Q Are there particular  
19 circumstances where they might purchase  
20 pursuant to a contract as opposed to  
21 without?

22 A I do not know that answer either.

23 Q Are there typical terms that you  
24 include in those contracts?

25 A I would believe so.



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2 Q And what would those be?

3 A I do not know the answer.

4 Q Have you seen contracts between

5 Olean and pork suppliers for --

6 (Simultaneous Crosstalk.)

7 A I have not.

8 Q -- purchase of pork?

9 A I have not.

10 Q But that is a mechanism that

11 Olean would use to purchase pork from

12 suppliers; is that right?

13 A Yes.

14 Q Are you familiar with any of the  
15 terms that would be in those agreements?

16 A No, ma'am.

17 Q So we talked about the two  
18 suppliers of pork you recalled Tyson and  
19 Seaboard.

20 I would like to go through those  
21 in a little more -- little more detail.

22 So what types of pork did Olean  
23 purchase from Tyson?

24 A To the best of my knowledge --  
25 from Tyson?

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2 Q Correct.

3 A To the best of my knowledge, just  
4 regular pork; anywhere between the rear  
5 end and the neck, I should say.

6 Q So Olean didn't have a specific  
7 subset of products that it would source  
8 from Tyson?

9 A No.

10 Q When did Olean begin purchasing  
11 pork from Tyson?

12 A I don't know that answer.

13 Q Is there someone who would?

14 A No.

15 Q There's no one from Olean that  
16 would know when Tyson began purchasing  
17 pork from the company?

18 MR. BOURNE: Object to form.

19 THE WITNESS: Not, not that I  
20 would know of. Some have passed away  
21 and some have moved on, retired.

22 So, yes, there may be somebody.

23 No, I wouldn't know where I would even  
24 start with.

25 BY MS. ZIMMERMAN:

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2 store called Ried's Food Barn.

3 Q David Ried owns the food store;  
4 is that correct?

5 A Ried's Food Barn, yes.

6 Q Was Ried's Food Barn a customer  
7 of Olean or a member retailer?

8 A Yes, Sarah.

9 Q So in the e-mail you just  
10 reviewed, is it fair to say Ried is  
11 generally outlining to Mark Hale why  
12 Ried's purchases from Olean have declined?

13 A I see that.

14 Q And Ried provides his reasons for  
15 increasing volumes from other suppliers.

16 Do you see that?

17 A Yes.

18 MR. BOURNE: Object to scope.

19 BY MS. ZIMMERMAN:

20 Q Suppliers like Sherwood Food  
21 Distributors?

22 MR. BOURNE: Same objection.

23 THE WITNESS: Yes.

24 BY MS. ZIMMERMAN:

25 Q Are you familiar with Sherwood

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2 Food Distributors?

3 A I have heard of them. I am not  
4 familiar with them.

5 Q Would you consider them a  
6 competitor of Olean Wholesale?

7 A Yes.

8 Q It sounds like Ried is explaining  
9 to Mr. Hale that one of the reasons they  
10 are purchasing more from Sherwood is  
11 because they found a greater selection of  
12 products at Sherwood; is that fair?

13 A Yes.

14 Q So is it fair to say that  
15 customers have preferences for certain  
16 products or value a selection?

17 A Yes.

18 Q And those preferences may impact  
19 which products Olean sells; is that fair?

20 A Say the question again, Sarah.

21 Q Would you say those customer  
22 preferences impact which products Olean  
23 purchases?

24 A Yes and no.

25 Q What do you mean by that?

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2 A So a lot of times at Olean

3 Wholesale, when a member would maybe find

4 a particular product from like Sherwood,

5 and they like the product, and a lot of

6 times as a co-op, Olean would bring those

7 products into Olean Wholesale and offer

8 them to everybody, which happened almost

9 daily because of all the different

10 members.

11 Obviously there is different

12 geographic areas, and things sold

13 differently in one area to the next. But

14 at Olean wholesale, these type of examples

15 right here, we took a good hard look at

16 and brought those items into the wholesale

17 to retain that business. Right. So this

18 is pretty good example of that.

19 Q So this is a good example of an

20 instance where one of Olean's customers

21 makes you aware of problems with either

22 the selection or other issues with what

23 Olean is offering; is that fair?

24 A Yes.

25 Q And then Olean was able to adjust

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2 the pork products that they offered

3 accordingly?

4 A Yes.

5 Q Would customers -- you know, in  
6 this instance the customer shared various  
7 reasons for moving to a different supplier  
8 or using a different supplier more than  
9 Olean.

10 Would they ever share factors  
11 like pricing in these kind of e-mails  
12 complaining about what was being offered  
13 by Olean?

14 A I can't speak to that.

15 Q At a high level, are you aware of  
16 that ever happening, of customers  
17 providing prices?

18 A Not to me. I am not aware of it.

19 MS. ZIMMERMAN: You can go ahead  
20 and take this down, Bryan.

21 BY MS. ZIMMERMAN:

22 Q So you mentioned -- I am just  
23 looking through my notes.

24 Mentioned earlier that you are  
25 aware that Olean purchased pork products

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2 from Tyson, right?

3 A Yes.

4 Q And I said -- and I believe you  
5 testified that you believe that Olean  
6 purchased pork products from Seaboard; is  
7 that correct?

8 A Yes.

9 Q Do you know for a fact whether  
10 Olean purchased pork products from  
11 Seaboard?

12 A I don't know that for a fact.

13 Q Do you have any basis to believe  
14 that Olean purchased pork products from  
15 Seaboard?

16 A Do I have any basis?

17 Q Yes.

18 A Well, kind of, yes. And what do  
19 I mean by kind of?

20 We carried over 6,000 items in  
21 our meat department, so I kind of believe,  
22 yes.

23 Q So your basis for stating that  
24 Olean purchased pork products from  
25 Seaboard is that you carried so many